

KAREN P. HEWITT
United States Attorney
DAVID D. LESHNER
Assistant U.S. Attorney
California State Bar No. 207815
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-7163
David.Leshner@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Criminal Case No. 08-CR-2254-BTM

Plaintiff,

DATE: August 15, 2008

TIME: 1:30 p.m.

V.

BRIAN KEITH HIGGS,

UNITED STATES' NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY

Defendant.

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and files its motion for reciprocal discovery. Said motion is based upon the files and records of this together with the attached memorandum of points and authorities.

///

///

///

///

///

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On July 8, 2008, defendant Brian Keith Higgs was arraigned on a 20-count Indictment charging
5 him with bringing in illegal aliens for financial gain, bringing in illegal aliens without presentation and
6 aiding and abetting, in violation of 8 U.S.C. §§ 1324(a)(2)(B)(ii), 1324(a)(2)(B)(ii) and 18 U.S.C. § 2.
7 Defendant entered a plea of not guilty.

8 **II**

9 **STATEMENT OF FACTS**

10 **A. Defendant's Apprehension**

11 On June 22, 2008, Defendant attempted to enter the United States from Mexico through the San
12 Ysidro, CA Port of Entry as the driver and sole visible occupant of a Ford F-150 pickup truck.
13 Defendant informed the Customs and Border Protection ("CBP") officer at primary inspection that he
14 had purchased the vehicle a couple of days ago. Records checks revealed the vehicle had been reported
15 stolen.

16 At secondary inspection, a Human Narcotic Detector Dog alerted the rear of the truck bed. CBP
17 officers discovered a non-factory compartment underneath the truck bed. Two individuals were
18 concealed inside the non-factory compartment. Both individuals admitted to being Mexican citizens
19 with no documents allowing them to enter or remain in the United States.

20 **B. Defendant's Post-Arrest Statement**

21 Defendant received Miranda warnings and agreed to make a statement. Defendant admitted
22 knowledge of the two undocumented aliens concealed in the rear of the pickup truck. According to
23 Defendant, he was not being paid to smuggle the individuals concealed in the truck. Rather, Defendant
24 stated he was smuggling aliens in order that "La Familia" would stop harassing him. His instructions
25 were to drop off the truck in Chula Vista, CA.

26 Defendant admitted to smuggling aliens on two prior occasions. CBP records show defendant
27 was apprehended on August 25, 2007 and December 26, 2006 attempting to enter the United States with
28 undocumented aliens concealed in his car. On each of those two prior occasions, Defendant admitted

1 to being paid to smuggle aliens into the United States.

2 **C. Material Witness' Statement**

3 The material witness, Adelina Martinez-Morales, stated that she is a Mexican citizen with no
4 documents allowing her to enter or remain in the United States. She informed CBP officers that she was
5 paying 500 Mexican pesos to be smuggled into the United States to be with her husband.

6 **III**

7 **MOTION FOR RECIPROCAL DISCOVERY**

8 The Government has and will continue to fully comply with its discovery obligations. To
9 date, the Government has provided Defendant with 116 pages of discovery, including the report of his
10 arrest, his rap sheet and a DVD of his post-arrest statements and the material witness' statement.

11 The Government moves the Court to order Defendant to provide all reciprocal discovery to
12 which the Government is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.
13 Specifically, Rule 16(b)(1) requires Defendant to disclose to the Government all exhibits, documents
14 and reports of testing or examination which he intends to use in his case-in-chief at trial and a written
15 summary of the names, anticipated testimony, and bases for opinions of experts he intends to call at trial
16 under Rules 702, 703, and 705 of the Federal Rules of Evidence.

17 **IV**

18 **CONCLUSION**

19 For the foregoing reasons, the Government respectfully requests that the Court grant its motion.

20
21 DATED: July 28, 2008.

Respectfully submitted,

22 Karen P. Hewitt
23 United States Attorney

24 s/ David D. Leshner
25 DAVID D. LESHNER
26 Assistant U.S. Attorney
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 08-CR-2254-BTM
)
Plaintiff,)
)
v.)
) CERTIFICATE OF SERVICE
)
BRIAN KEITH HIGGS,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES' NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Gregory Murphy, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2008.

/s/ David D. Leshner
DAVID D. LESHNER